



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mike Pugh
Dyno Nobel, Inc.
494 Four H Camp Road
Morgantown, WV 26508

DATE: September 20, 2011

ORDER NO.: 7348

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Dyno Nobel, Inc. (hereinafter "Dyno Nobel").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Dyno Nobel operates an industrial facility located in Morgantown, Monongalia County, West Virginia. Dyno Nobel was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611147 on May 20, 2004. Said registration expired on September 30, 2009.
2. Establishments with discharges composed entirely of stormwater associated with industrial activities must obtain a permit from the West Virginia Department of Environmental Protection (WVDEP) pursuant to §22-11-8 of the State Code of West Virginia and as described in Legislative Rule Title 47, Series 10.
3. WVDEP advised Dyno Nobel in mid-2009, early -2010, and January 2011 to reapply for permit registration coverage under the Multi-Sector General WV/NPDES Water Pollution Control Permit for Stormwater Discharges Associated with Industrial Activity.
4. On March 23, 2011, Dyno Nobel's permit was reissued.

5. On July 8, 2011, Dyno Nobel submitted documentation of correspondence with WVDEP concerning its permit renewal.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Dyno Nobel shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within forty-five (45) days of entry of this Order, Dyno Nobel shall submit an administratively complete application for permit coverage for the regulated activity. This application shall be submitted to:

**Permitting Section
DWWM
ATTN: Patrick D. Burch
601 57th Street
Charleston, WV 25304**

3. Because of Dyno Nobel's West Virginia Code violations, Dyno Nobel shall be assessed a civil administrative penalty of four thousand eight hundred seventy dollars (\$4,870) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Dyno Nobel hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Dyno Nobel agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Dyno Nobel does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Dyno Nobel's other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Dyno Nobel shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Dyno Nobel becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Dyno Nobel intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Dyno Nobel (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Dyno Nobel of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Dyno Nobel to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Dyno Nobel, its successors and assigns.

7. This Order shall terminate upon Dyno Nobel's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Mike Pugh
Dyno Nobel, Inc.

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised January 2011